

### **Amendments to the Claims:**

Claim 1 has been amended herein. Please note that all claims currently pending and under consideration in the referenced application are shown below. Please enter these claims as amended. This listing of claims will replace all prior versions and listings of claims in the application.

### **Listing of Claims:**

1. (Currently Amended) A transmitter, ~~apparatus~~ comprising:  
a processor operative to control transmission and retransmission of data; and  
a memory storage device operative for storing a plurality of computer-readable instructions, comprising:  
a first set of instructions for receiving a transmission frame error rate and a retransmission frame error rate from a receiver;  
a second set of instructions for determining a transmission energy setpoint as a function of the transmission frame error rate and a transmission quality, wherein the determination of the transmission energy setpoint is responsive to an update trigger; and  
a third set of instructions for determining a retransmission energy setpoint as a function of the retransmission frame error rate and a retransmission quality, wherein the determination of the retransmission energy setpoint is responsive to the update trigger.
2. (Previously Presented) The transmitter of claim 1, wherein the transmission quality is measured by a received error indication signal.
3. (Previously Presented) The transmitter of claim 1, wherein the transmission energy setpoint and the retransmission energy setpoint are determined as traffic to pilot ratios.
4. (Previously Presented) The transmitter of claim 1, wherein the third set of instructions determines the retransmission energy setpoint as a function of the retransmission frame error rate, the retransmission quality, and the transmission energy setpoint.

5. (Previously Presented) The transmitter of claim 4, wherein the third set of instructions determines the retransmission energy setpoint by adding a delta value to the transmission energy setpoint.

6. (Previously Presented) In a wireless communication system, a method comprising:

determining a transmission energy setpoint to achieve a transmission frame error rate;  
adjusting the transmission energy setpoint on occurrence of a transmission error, wherein the transmission error is received from a receiver;

determining a retransmission energy setpoint to achieve a retransmission frame error rate;  
and

adjusting the retransmission energy setpoint on occurrence of a retransmission error, wherein the retransmission error is received from the receiver.

7. (Original) The method of claim 6, wherein adjusting the retransmission energy setpoint further comprises:

adjusting the retransmission energy setpoint as a function of the transmission energy setpoint.

8. (Original) The method of claim 6, wherein adjusting the retransmission energy setpoint further comprises:

adjusting the retransmission energy setpoint to achieve a desired frame error rate for retransmission.

9. (Original) The method of claim 6, wherein adjusting the transmission energy setpoint further comprises:

adjusting the transmission energy setpoint to achieve a desired frame error rate for transmission.

10. (Original) The method of claim 6, wherein the transmission frame error rate is greater than the retransmission frame error rate.

11. (Original) The method of claim 6, wherein the transmission frame error rate and the retransmission frame error rate result in a desired total frame error rate.

12. (Original) The method of claim 6, wherein the transmission frame error rate and the retransmission frame error rate are predetermined values.

13. (Original) The method of claim 6, wherein the transmission frame error rate and the retransmission frame error rate are dynamic values.